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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/522,056	08/15/2005	Peter Frost	C70512	3967

20462 7590 08/16/2010
GlaxoSmithKline
GLOBAL PATENTS -US, UW2220
P. O. BOX 1539
KING OF PRUSSIA, PA 19406-0939

EXAMINER

MAEWALL, SNIGDHA

ART UNIT	PAPER NUMBER
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1612

NOTIFICATION DATE	DELIVERY MODE
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08/16/2010

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

US_cipkop@gsk.com

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/522,056	Applicant(s) FROST, PETER	
	Examiner Snigdha Maewall	Art Unit 1612	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 29 July 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
 b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ They raise the issue of new matter (see NOTE below);
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. ☐ Applicant's reply has overcome the following rejection(s): _____.
 6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:
 Claim(s) allowed: _____.
 Claim(s) objected to: _____.
 Claim(s) rejected: 1, 5, 8-10, 12-19.
 Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
 12. ☒ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). 07/29/10
 13. ☐ Other: _____.

/Snigdha Maewall/
 Examiner, Art Unit 1612

/Gollamudi S. Kishore/
 Primary Examiner, Art Unit 1612

Continuation of 11. does NOT place the application in condition for allowance because: Applicant argues that '211 publication does not teach aerosol dentifrice as claimed, the reference does not suggest using propellant mixture claimed that is mixture of DME and n-butane other than hydrocarbon propellants, regarding Stoltz, it relates to oil in water emulsion dispensed with propellant, isobutene, propane etc. and the problem addressed by Stoltz is not one of alternative propellant systems but of rapidly dissipating foams and ensuring there is stability of formulation in oral cavity and not on tooth brush. Stoltz does not disclose mixing DME with n-butane and DME is not exemplified. Applicants arguments are not persuasive, first the claimed invention does not recite whether the aerosol dentifrice is a gel or spray or powder or foam and there is no particle size or amount of water recited in claim 1. '211 while teaching tooth cleaning, teaches use of propellant as propellant gas mixtures., the reference thus teaches known propellants used in dental art which are used for the same purpose as the claimed invention that is as propellant gas. Secondary reference has been relied upon for the teachings that various known aerosol propellants such as n-butane, propane and DME can be used for providing stability to foam. Stoltz thus teaches use of known propellants in known aerosol product. Since the claims do not specifically recite the nature of aerosol that is as being gel or foam or spray or powder and with no specific particle size which distinguishes it from the prior art's aerosol foam and since Stoltz suggests in column 7, lines 32-37 that persons of ordinary skill would realize using combination of propellants, it would be obvious to one of ordinary skill to have utilized the known propellants for predictable results that is stable foam formation. In response to applicants arguments that Stoltz deals with stability of foam and the instant application deals with stability of dentifrice, it is respectfully pointed out that no stability limitations are reflected in instant claims and besides, the result shown in instant specification deals with stable or unstable foam with specific amounts of various components including amount of water which are not reflected in instant claim 1. Instant claims are drawn to aerosol formulation without any specific limitations with respect to aerosol being gel or powder or spray or foam. Utilization of known propellants in known aerosol dentifrice would have been obvious to one of ordinary skill in the art. In response to applicants arguments that DME has not been disclosed, it is respectfully pointed out that reference is not limited to disclosed examples and preferred embodiments, a reference is good for all it teaches and in the instant case primary reference teaches using hydrocarbon propellants and secondary reference suggests using mixture of propellants, hydrocarbon and non-hydrocarbon. Applicant argues one would not look at long list of propellant from Stoltz and combine it with '211 to arrive at claimed invention because one is directed to aerosol foam and the other to post foaming composition to solve stability issues. The examiner does not agree and as stated earlier no stability requirements are disclosed in claims and the stability results due to combination of n-butane and DME shown by applicants in instant specification on page 4-5 have specific amounts of various components such as humectant, slurring agent, thickening agent and water with specific amount of propellants with specific pressure limitations which are not recited in claim 1, thus the results of stability do not commensurate with the scope of the claims as recited. Applicant argues regarding '295 that the reference is only foamable formulation but not an oral care composition or does not exemplify DME and n-butane, therefore the references cannot be combined. These arguments are not persuasive because '295 has been relied upon to show that various combinations of propellants such as DME and n-butane can be used in foamable preparation, therefore utilization of such known propellants would be obvious to one of ordinary skill in the art. The rejections will be maintained.

The IDS filed on 07/29/10 has been acknowledged and entered.